

Incoming  
cc: Leslie  
cc: Paul  
Steve Alder



Holme Roberts & Owen LLP  
Attorneys at Law

SALT LAKE CITY

August 12, 2008

BOULDER

Dana Dean, P.E.  
Associate Director – Mining  
State of Utah, DNR  
Division of Oil, Gas & Mining  
1594 W. North Temple, Suite 1210  
P O Box 145801  
Salt Lake City UT 84114-5801

COLORADO SPRINGS

DENVER

Re: Request for Agency Action American Gilsonite Company – Self-  
Bonding and Indemnity Agreement / Escrow  
Docket No. 2008-022  
Cause No. M/047/010A

LONDON

Dear Ms. Dean:

LOS ANGELES

Enclosed is a copy of the Request for Agency Action we filed yesterday on behalf of American Gilsonite Company. As we agreed in our meeting last week, AGC is not contesting the Division's estimate of increase surety for the Bonanza Mine. As we discussed, AGC is requesting Board approval of a modification to the Self-Bonding and Indemnity Agreement to provide for the increase in reclamation surety and for a new escrow agreement to cover that amount by annual payments over the next four years. We are also requesting Board approval of the release of certain reclaimed and undisturbed mining sites as provided in the modification to AGC's mine plan of reclamation.

MUNICH

PHOENIX

Thank you for your consideration, if you have any questions or concerns, please feel free to contact the undersigned.

SAN FRANCISCO

Very truly yours,

A. John Davis

cc: Steve Alder w/o enclosure

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DIV. OF OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

<b>IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF AMERICAN GILSONITE COMPANY FOR APPROVAL OF A SELF- BONDING/ ESCROW AGREEMENT FOR ITS MINING OPERATIONS LOCATED IN UINTAH COUNTY, UTAH</b>	<b>REQUEST FOR AGENCY ACTION</b>  <b>DOCKET NO:</b> 2008-0002  <b>CAUSE NO:</b> M/047/010
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American Gilsonite Company ("AGC") by and through its attorneys, Holme Roberts & Owen, LLP, hereby petitions the Utah Board of Oil, Gas & Mining ("Board") for approval of a self-bonding/escrow agreement to cover that portion of AGC's current reclamation obligations not covered by its existing reclamation bond and certificate of deposit.

**STATEMENT OF MATERIAL FACTS**

1. AGC is a Delaware corporation in good standing and is qualified to conduct business in the State of Utah.
2. AGC owns, operates mines and processes gilsonite ore near Bonanza, Utah (the "Bonanza Mine"). AGC and its predecessors have mined gilsonite in this area since the early 1900's. AGC operates the Bonanza mine under the authority of Utah Division of Oil, Gas and Mining (the "Division"), Permit No. M/047/010.
3. The Utah Mined Land Reclamation Act, UCA Sections 40-8-1 et. seq., (the "Act"), requires that upon permanent cessation of mining operations, the operator shall complete reclamation of the mine site. Further, the Act and the Rules adopted thereunder, Utah Admin. Code Rule R647-4-113, require a mining operator to provide financial assurances, in the form of cash, an approved corporate surety bond, a self-bonding agreement, an escrow

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account or an irrevocable certificate of deposit, in an amount sufficient to meet its reclamation obligations.

4. The Division has estimated AGC's current reclamation obligation as \$795,000.

5. As discussed in detail below, AGC proposes and requests Board approval of a plan to meet its total reclamation liabilities of \$795,000 with the following instruments and actions:

(a) A surety bond with Travelers Property Casualty in the amount of \$324,900.00, currently in place;

(b) A certificate of deposit for \$189,100.00, also currently in place; and

(c) A self-bond and indemnity agreement with the State of Utah in the amount of \$281,000 together with an escrow agreement for that sum, with the requirement that AGC will deposit \$71,000 within 15 days of the issuance of the Order granting this Request; and deposit \$70,000 per year for three additional years until the full amount is in escrow, thereby replacing and canceling the self-bonding agreement.

#### **AGC's Current Reclamation Obligations**

6. In 2000 and 2001, the Division and AGC undertook a complete review of AGC's bonding and summary listing of mine sites. Following this complete review and, in cooperation with AGC, the Division required a cost escalation of AGC's current reclamation liabilities from \$324,900 to \$514,000.

7. By Findings of Fact, Conclusions of Law and Modified Order dated August 7, 2002 in Docket No. 2002-005, Cause No. M/047/010, the Board entered an Order approving a Self-Bonding and Indemnity Agreement (the "Self-Bonding Agreement") in the amount of \$189,000 and an Escrow Agreement providing for an initial down payment of \$47,275.00 due and payable to the escrow agent within 15 days of the approval of the order and additional annual payments of \$47,275.00 due and payable on or before June 15<sup>th</sup> in each consecutive year until the full amount of \$189,100.00 was paid. This sum was to be provided as collateral for and timely replacement of the Self-Bonding Agreement. The Self-Bonding Agreement was approved by Board counsel and executed by the Chair of the Board. The final Escrow Agreement was reviewed and approved by Division counsel, and approved by

Board counsel, for consistency with the Order. A true and correct copy of the Self-Bonding Agreement is attached hereto as Exhibit "A" and fully incorporated herein.

8. AGC fully and timely complied with the prior Order of the Board and the Self-Bonding Agreement and paid the \$189,100 sum into escrow.

9. Pursuant to paragraph 6 of the Self-Bonding Agreement, AGC requests that the Self-Bonding Agreement be modified and adjusted to provide for increases in the surety amount now being required by the Division for the Bonanza Mine. As noted above, based upon the Division's recent review of AGC's reclamation status and operations it has arrived at a total surety amount of \$795,000, an increase of \$281,000 from the amounts currently covered under the existing surety bond and the certificate of deposit.

10. This amount assumes the release of the following reclaimed sites from AGC's Reclamation Plan: B-40, R-2, R-4, H-2 and H-10; the release of the following undisturbed sites: WH-7, B-46 and B-50 and the addition of site E-33. The Division supports the foregoing, but under the Self-Bonding Agreement, only the Board may adjust the terms and conditions of said Agreement. Accordingly, before the Division may finalize the proposed release of the above sites, the addition of site E-33 or the increase in surety, the Board must, in accordance with paragraph 6 of the Self-Bonding Agreement, review AGC's financial status, its reclamation performance, the need for continued self-bonding and shall "adjust the terms, conditions and amount of self-bonding to conform with the requirements of the Board and Division as determined by the existing mine condition and applicable laws and regulations."

11. AGC does not dispute the increase in its surety amount and has made good faith attempts to obtain a surety bond from a qualified surety company for this amount as well as the \$189,100 currently covered by the certificate of deposit. As a small, private company, AGC has been unable to obtain a surety bond from an insurer meeting the state of Utah's standards.

## REQUEST

### **AGC Requests Approval of a Self-Bonding Agreement for the Remaining Amount of \$281,000 Which Will Be Supported By an Escrow Account.**

12. Utah Code Ann. Section 40-8-14(3) and governing regulations, authorize self-bonding agreements with Board approval. In making its decision on a self-bonding proposal, the Board is to consider the Operator's financial status, its assets within the State, its past performance in complying with contractual agreements and the facilities available to carry out the reclamation work. The Division also has certain qualifications that, although not established by regulation, it typically uses as guidelines for evaluating a self-bonding proposal and advising the Board as to the advisability of approving the self-bonding agreement.

13. Upon review and discussion with Division staff, AGC has determined that as a small, private mining company, it does not meet all of the Division's typical criteria for a self-bond. Nonetheless, consistent with the Board's prior approval, AGC believes that its current proposal for self-bonding for this limited portion of its reclamation liabilities together with the supporting escrow, once again deserves approval by the Board.

14. Demand for and sales of gilsonite are strong worldwide and AGC's current financial situation remains robust. AGC's business is remarkably diversified for a company of its size, contributing to the stability of AGC's financial condition.

15. AGC will again supplement the self-bonding agreement by establishing an escrow account as collateral, and pay into the escrow, over a periodic basis, to reduce the self-bond to zero by 2011.

### **AGC Requests Approval of an Escrow Surety in The Amount of \$281,000, Which within Four Years Will Reduce the Self-Bond Amount to Zero.**

16. Utah Admin. Code R647-4-113-4.15 authorizes establishment of an escrow account for reclamation liabilities. AGC's proposal, in this Request, is exactly the same as in the 2002 request, that is, to combine two elements of the forms of surety authorized, self-bonding

and escrow deposits, into a single coordinated plan. The specifics of the escrow fund would be as follows:

(a) Within 15 days of approval of this Request by the Board, AGC would execute i) a modified or replacement Self-Bonding Agreement with the Board and ii) an approved Escrow Agreement with the Division and a mutually agreed upon third party escrow;

(b) AGC would deposit \$71,000 in the escrow fund (the "Fund") within 5 business days of execution of the Escrow Agreement and provide proof of the deposit to the Division within 10 days;

(c) Thereafter, AGC would make annual payments of \$70,000 into the Fund on the anniversary date of the Order for three consecutive years, at which time the Fund would contain the full \$281,000. The final payment may be reduced by the amount of accrued interest in the Fund. AGC will provide written proof to the Division within 10 days of each deposit.

(d) All interest earned by the monies in the Fund shall accumulate to the benefit of the Fund until it contains the full \$281,000, is terminated by the mutual consent of the parties, or disbursement of the Fund is ordered by a court of competent jurisdiction.

(e) If, during this escrow period the Division approves AGC's reclamation efforts and reduces AGC's reclamation obligations, AGC shall be permitted to withdraw such monies from the Fund in excess of the amount then required to meet its liabilities.

17. AGC meets the general statutory criteria for approval of this proposed self bond/escrow arrangement. AGC and its legal predecessors have been responsibly mining Gilsonite in the State of Utah for over 100 years. It has substantial assets in the State of Utah and is the largest of the three companies in the world that provide this unique and valuable mineral to the world's markets, with more than twenty years of proven reserves. It has demonstrated its ability and commitment to comply with its contractual agreements; has the financial and technical ability to reclaim its operations and is and will continue to conduct concurrent reclamation of its operations.

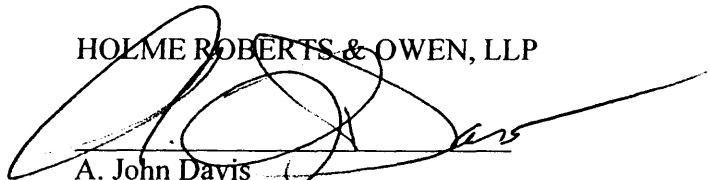
**PRAYER FOR RELIEF**

**AGC respectfully prays for the following relief:**

1. An Order of the Board releasing the reclaimed sites in the Bonanza Mine noted herein and the addition of site E-33 to AGC's Mine Plan of Reclamation.
2. Board approval of a modification of the Self-Bonding Agreement in the amount of \$281,000 to meet that portion of AGC's reclamation obligation not covered by the existing surety bond and the certificate of deposit.
3. Board approval of the Escrow Agreement prayed for herein, with an initial down payment of \$71,000 and additional annual payments of \$70,000 for three years, as collateral for and timely satisfaction of AGC's surety obligations under the Self-Bonding Agreement.
4. For such additional relief as the Board deems proper under the circumstances.

Respectfully submitted this 11<sup>th</sup> day of August, 2008.

HOLME ROBERTS & OWEN, LLP

  
A. John Davis  
299 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
tel: (801) 521-5800

Address of Petitioner:  
American Gilsonite Company  
350 Cambridge Ave., Suite 350  
Palo Alto, CA 94306  
tel: (650) 233-7166

EXHIBIT "A"

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
BOARD OF OIL, GAS & MINING  
1594 West North Temple, Suite 1210  
Salt Lake City, Utah 84116  
(801) 538-5340

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DIV. OF OIL, GAS & MINING

SELF-BONDING AND INDEMNITY AGREEMENT

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This Self-Bonding and Indemnity Agreement ("Agreement") is entered into by and between AMERICAN GILSONITE COMPANY ("Operator") and the STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES, BOARD OF OIL, GAS & MINING ("Board").

RECITALS

The Board and the Operator find that:

1. Pursuant to the Mined Land Reclamation Act, §40-8-1 et seq., Utah Code Annotated (1953, as amended) ("Act") and applicable rules, the Operator has obtained Permit No. M/047/010 from the Division of Oil, Gas & Mining ("Division") to operate mines and process gilsonite ore on properties located in Bonanza, Uintah County, Utah ("Bonanza Mine Operation"), which land is more specifically described in Exhibit A.
2. The Board and the Operator agree that, upon permanent cessation of operations, complete reclamation of the Bonanza Mine Operation pursuant to Permit No. M/047/010, including revisions and amendments (collectively "Permit"), the Act, the Reclamation Contract, and applicable rules is required and is essential to prevent conditions detrimental to the general safety and welfare of



the citizens of the State and to provide for the subsequent use of the lands that have been affected by the mining operations.

3. The Operator currently has in place a \$324,900.00 surety bond for reclamation of the Bonanza Mine Operation ("Existing Bond"), issued by Travelers Property Casualty, which meets the Division's rating requirements as set by R647-4-113.4.11 of the Utah Administrative Code.

4. The Division has reviewed the Operator's current reclamation obligation for the Bonanza Mine Operation and has determined the obligation to be \$514,000.00, which is an amount of \$189,100.00 beyond the Existing Bond.

5. Upon request of the Operator, the Board has determined to accept, by its Order of May 31, 2002, a Self-Bonding Agreement together with a Pledge and Escrow Agreement in satisfaction of the \$189,100.00 balance of the Operator's reclamation obligation. (The May 31, 2002 Board Order was modified by Order of the Board at the July 31, 2002 Board hearing pursuant to a stipulation with the Division in order to clarify the role of the Division and the Board in the review and approval of the Pledge and Escrow Agreement and the Self-Bonding Agreement. The modification did not affect the obligations of the Operator under the terms of the May 31, 2002 Order. As used herein, "Order" shall include all references to the May 31, 2002 Order and to the modified Order.)

6. The Order provides that the Self-Bonding Agreement and Escrow Agreement require the Operator to satisfy certain conditions as set forth therein including making payment into escrow

of four annual payments of \$47,275.00, beginning June 15, 2002, continuing on June 15 of 2003 and June 15 of 2004, and making a final payment on June 15, 2005. The final payment may be reduced by the amount of interest that has accrued and been retained in the escrow account, provided that the total amount in escrow, including interest, shall be \$189,100.00.

7. The Operator has designated Kip Grubaugh, H C 73, Box 28, Vernal, Utah, as its agent for service of process in the State of Utah.

8. The Operator or its predecessors-in-interest have owned, mined, and processed gilsonite ore near Bonanza, Utah since the early 1900's and the Operator has been in continuous operation as a business entity for sixty-eight years.

9. The Operator has submitted financial statements to the Division and Board, which were accompanied by an audit opinion prepared by Deloitte & Touche, and has provided other financial information and agreed to conditions as set forth in the Order; all of which the Board found to satisfy the financial criteria for a self-bonding agreement.

#### **TERMS AND CONDITIONS**

NOW, THEREFORE, in return for permission to mine pursuant to the Act, the applicable rules, the Reclamation Contract, and the Permit, in addition to other consideration, the sufficiency and receipt of which is hereby acknowledged, the Operator hereby agrees to be held and bonded to the Board for the sum of One Hundred Eighty-Nine Thousand One Hundred Dollars (\$189,100.00), which is in addition to the amount of the Existing Bond, as surety for the timely and satisfactory

performance of reclamation responsibilities for the Bonanza Mine Operation and the Permit. By the submission and execution of this Agreement, the Operator does truly bind itself, its successors and assigns, jointly and severally to the terms and conditions set forth herein.

1. The Operator shall perform all duties and fulfill all requirements necessary to reclaim the Bonanza Mine Operation as set forth in the Act, the applicable rules, the Reclamation Contract, and the terms of the Permit as they currently exist or as they may be modified hereafter.

2. Except as otherwise provided for herein, the release of liability under this Agreement is conditioned upon the successful reclamation of the permit area as provided in the Reclamation Plan for the period of time and in the manner specified in the Act, the applicable rules, and the terms of the Permit. The liability or responsibility of the Operator hereunder is \$189,100.00, which is in addition to the amount of the Existing Bond and is subject to the right of the Board to adjust the amount of liability as provided in Paragraph 6 hereof.

3. The Operator hereby agrees to indemnify and hold the Board and Division harmless from any claim, demand, liability, costs, charge, or suit brought by a third party as a result of the Operator's failure to abide by the terms and conditions of the Reclamation Plan as set forth in the Permit and from any failure to comply with the terms of this Agreement.

4. Upon successful completion of part or all of the obligations secured hereby, the Operator may petition the Board for a final release of part or all of the obligations under this Agreement. Upon such petition, the Division shall conduct an inspection to ascertain whether duties

and obligations of the Operator under the Act, the applicable rules, and the Permit have been fulfilled. If it is determined that such duties and obligations have been fulfilled, the Board shall release the Operator from part or all of its obligations under this Agreement and shall file a notice of such release in the property records of Uintah County, Utah. The Board shall release the Operator of its obligations under this Agreement before the Division releases any portion of either the Pledge and Escrow Agreement or the Existing Bond.

5. Beginning June 15, 2003 and each year thereafter while this Agreement remains in effect, the Operator shall file its most recent audited financial results with the Board and Division, and the Division shall review the information on behalf of the Board to determine if the Operator's financial position has changed adversely from that presented to the Board in May of 2002.

6. When the final escrow payment is made, the Operator shall file a Request for Agency Action with the Board seeking Board review of the financial status of the Operator; the need for continued self-bonding; and the amount of the Operator's reclamation liability, and shall adjust the terms, conditions and amount of self-bonding to conform with the requirements of the Board and Division as determined by the existing mine condition and applicable laws and regulations.

7. The Operator may terminate this Agreement by providing written notice to the Board no less than 120 days prior to the date of termination. The Operator must provide an alternate reclamation surety in a form and amount satisfactory to the Board prior to 30 days before the stated date of termination.

8. The Board may terminate this Agreement by providing written notice to the Operator no less than 120 days prior to the date of termination unless the Board determines that the Operator no longer meets the financial criteria for a written contractual agreement, whereupon the Board may shorten the above-stated notice period for termination of this Agreement. The Operator must provide an alternate reclamation surety in a form and amount satisfactory to the Board prior to 30 days before the stated date of termination.

9. If the Operator fails, within the time periods set out in Paragraphs 7 and 8 herein, to provide an alternative reclamation surety satisfactory to the Board, the Division or Board may pursue any available remedies, including, but not limited to, the direction to cease all operations at the Bonanza Mine Operation and the direction to initiate and complete all reclamation operations at the Bonanza Mine Operation.

10. This Agreement will be governed and interpreted according to Utah law.

11. In addition to any other liability described above, the Operator shall pay reasonable attorney fees and costs incurred by the Board if the Board is successful in any action or suit regarding this Agreement.

12. This Agreement shall be binding jointly and severally upon the Operator and its successors and assigns, including any party who may acquire a material and substantial ownership interest in a major asset or subsidiary entity, or may acquire material and substantial ownership or control of the Operator or a subsidiary entity as a result of a sale, exchange or other transfer of the assets of the Operator, including such transfers as security, foreclosure of security agreements, or

other assignment agreements with the Operator. Such assignments of ownership shall include any exchange, sale, other transfer of stock, bonds, evidences of indebtedness, or other attributes of ownership that materially effect the control and ownership of the corporation, its subsidiaries, or any major mining properties or assets. Any such transfer is subject to the posting of acceptable substitute surety and the applicable statutes and rules of the Division.

13. This Agreement is expressly conditioned upon the Operator maintaining its current financial status and complying with the payment obligations to the escrow as set forth in the May 31, 2002 Board Order.

EXECUTED BY THE PARTIES intending to be bound hereby on the dates indicated below.

AMERICAN GILSONITE COMPANY

By [Signature]  
(Signature)

8/15/02  
Date

Name Ted Stevens

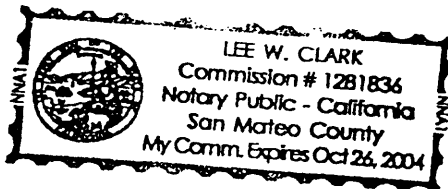
Title VP & General Counsel

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN MATEO )

On the 15<sup>th</sup> day of August, 2002, personally appeared before me  
Ted Stevens, who being by me duly sworn did say that  
he/she, the said Ted Stevens is the Vice President General Counsel of American  
Gilsonite Company, and that said instrument was signed in behalf of said corporation by authority of  
its bylaws or a resolution of its board of directors.

My Commission Expires: \_\_\_\_\_

[Signature]  
Notary Public  
Residing at: \_\_\_\_\_



BOARD OF OIL, GAS & MINING

By Elise Erler  
ELISE L. ERLER, Chairperson

Sept 4, 2002  
Date

APPROVED AS TO FORM:

Kurt E. Seel  
Kurt E. Seel  
Assistant Attorney General  
Attorney for Division of Oil, Gas & Mining

Steven F. Alder  
Steven F. Alder  
Assistant Attorney General  
Attorney for Board of Oil, Gas & Mining